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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/645,091  | 08/21/2003  | Lewis Albert Haws    | ITW-14143           | 7308             |
| 44702   | 7590        | 10/20/2004           | EXAMINER            |                  |
| OSTRAGER CHONG FLAHERTY & BROITMAN PC<br>250 PARK AVENUE, SUITE 825<br>NEW YORK, NY 10177 |             |                      | SIPOS, JOHN         |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3721                |                  |

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

5W

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/645,091             | HAWS ET AL.         |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | John Sipos             | 3721                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

### ***RESTRICTION REQUIREMENT***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

**Group I. Claims 1-16**, drawn to a method of making packages, classified in Class 53, subclass 412.

**Group II. Claims 17-35 and 39**, drawn to a thermoforming packaging apparatus, classified in Class 53, subclass 559.

**Group III, Claims 36-38**, drawn to a packaging apparatus with zippers and sliders, classified in Class 53, subclass 133.4.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups I and II/III are related as **process and apparatus for its practice**. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP 806.05(e)). In this case the apparatus set forth in the claims of Groups II and III can be used to practice a method other than the one set forth in the claims of Group I. For example, the apparatus can be used to practice a method wherein the tacking and sealing take place while the webs are moving or sealing the web and the zipper in small areas and not along lines connecting the tack zones.

The inventions of Groups II and III are related as **subcombinations disclosed as useable together in a single combination**. The subcombinations are distinct from each other if they are shown to be separately useable. In the instant case, each of the inventions of these Groups has separate utility because they can be used in packaging machines without the specifics of the

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other machine, such as the thermoforming of Group II or the slider applying of Group III. (See MPEP 806.05(d)).

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

A telephone call was made to Mr. D. Flaherty, attorney of record in this case, on 10/12/04 to request an oral election to the above restriction requirement, but that call did not result in an election being made.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

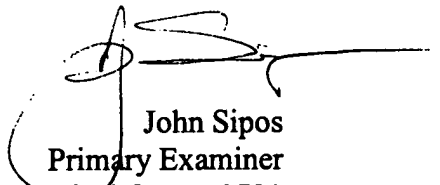
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

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John Sipos  
Primary Examiner  
Technical Center 3721

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